### JURISDICTION: VICTORIA, AUSTRALIA

#### ENVIRONMENT

<table>
<thead>
<tr>
<th>Population Size</th>
<th>4,582,000 million (December 1996)</th>
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<td>Labour Force</td>
<td>2,299,000 million (May 1997)</td>
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#### Demographic and Economic Indicators

Victoria, located in the south-east corner of the Australian continent covers only about 3% of the country's total area. Though it ranks sixth in area it has the second largest population (equal to 24.9% of Australia's total population) of any of the six states and two territories comprising the Commonwealth of Australia. The population density of Victoria is 20 persons per square kilometre versus the national average of 2 persons per kilometre. 3,218,050 million people (or 71.5% of the total population of the state) live in the capital city of Melbourne. Victoria's southern border is 1,200 kilometers of coastline.

The economy of Victoria is diversified with agriculture, manufacturing (food, beverages and tobacco; machinery and equipment; petroleum, coal, chemical and associated products) and some resource-based industry forming the basis of its economy. Its principal trade partners, in terms of imports, are the United States, Japan, Germany and China and, in terms of exports, Japan, Singapore, New Zealand and Korea.

In May 1997, Victoria's unemployment rate was 9.1% (down from 10.4% in 1995). Average weekly earnings for all employees was $582.40 in February 1997.
GOVERNANCE & ADMINISTRATION

Nature of System
A stated-based, compulsory workers' compensation program. There is an exclusive central fund, but with a private sector delivery system (marketing and selling of policies, premium collection, claims handling, etc.) through 16 licensed private insurers.

Principles and Mandate
The mission statement of the Victorian WorkCover Authority is: "prevention of injury is our challenge; return to work is our goal; quality care is our commitment; fair compensation is our obligation; world's best is our reward."

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1 In Australia there are ten different employer-financed schemes of occupational disability benefits -- six states and two territories plus two federal schemes, a federal system for seafarers and a federal system for federal government employees.

2 In terms of total coverage, this mix of public underwriting and private sector delivery is the dominant form in Australia operating in Victoria, New South Wales, South Australia.

3 Over the past decade the Victoria workers' compensation system has undergone a series of fundamental reforms. Until 1985, the system was privately underwritten by 52 private insurers and one state insurer. In 1985, primarily in response to complaints from employers about the costs of the system (average premium rate of 4.8% of payroll) and from employees about contested claims handling resulting in delays in determination of claims sometimes in excess of two years, the state appointed a committee of inquiry, the Cooney Committee, to look into the operation of the Victorian system. The fundamental recommendation of this committee, to move to a state monopoly fund, was adopted by the labour government of the day and the WorkCare scheme under the control of the Accident Compensation Commission was established. Some private insurers remained involved in claims administration as agents for the ACC. The new scheme was plagued by controversy and costs skyrocketed (in 1992, $2.1 billion unfunded, the 3% premium still the highest in the country and 16,000 long-term claimants). The key faults of the new system were little control over access and no real focus on return to work. The lack of return-to-work incentives produced a large cohort of long-term, partially incapacitated workers who became compensation dependent, and this, combined with the ease of access to the scheme, produced a range of unfortunate side effects including the stigmatization of workers on compensation benefits (Lindberg, Best Practice in Workers' Compensation: an Australian Perspective, 1996, page 6). With the coming into power of a new conservative administration in 1992, the scheme was totally revamped. Building on the lessons gained from the WorkCare system (the key reasons for the Victorian WorkCare failure as found in benchmarking studies undertaken by Boston Consulting Group and other studies undertaken by various academics and practitioners was the heavily centralized rehabilitation system, which largely excluded employers and was captured by the providers, the overly legalistic and expensive dispute resolution system; and the benefits structure which overly compensated partially handicapped workers and did not provide sufficient incentives for return to work, Lindberg, 1996, page 7), the new workers' compensation scheme, with the name of WorkCover, was introduced in late 1992. It was the first step in a four step reform process that also includes reform of benefits and claims management.
Access to Litigation

The system allows access to fault-based common law benefits, but only for seriously injured workers. A seriously injured worker\(^4\) can sue for pecuniary loss up to a statutory maximum amount ($757,930 in 1997) and for non-economic loss (maximum $341,640 in 1997). Awards under the *Wrongs Act* for death can not exceed $500,000. Losers are liable for court costs. However, in response to escalating costs (common law payments rose from $3.4 million in 1994/95 to $139.76 million in 1996/97) and concerns regarding the effectiveness of common law remedies, 1997 amendments, effective December 11, 1997, abolish common law for workers injured on or after that date\(^5\).

Scope of System

**Who is Covered?**

Worker is defined under the Act to mean a person who has entered into or works under a contract of service or apprenticeship or otherwise with an employer. In addition, individuals "deemed" to be a worker are also covered under the legislation. Specific deeming provisions in the legislation relate to contractors, passenger vehicles, share farmers, religious bodies and organizations, secretaries of co-operatives societies and persons employed by the crown. Secondary school students participating in work experience programs and tertiary or "further education" students are also considered workers. Partners, self employed and sole traders do not fall within the definition of worker and are not covered under the scheme. About 85% of the total labour force is covered by the Victorian including dispute resolution processes; premium and insurance arrangements; and market liberalization and privatization.

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\(^4\) Serious injury is defined in terms of level of impairment of 30% or more as measured by the methods specified in the *AMA Guides to the Evaluation of Permanent Impairment*.

\(^5\) The 1985 reform proposals recommended the complete abolishment of common law. However, as a compromise, to obtain union support, a modified form of common law was retained for non-economic loss only with a original cap of $200,000. Under the 1992 reforms, common law action was no longer restricted to recovery for non-pecuniary or non-economic loss, but the availability of common law action was restricted to seriously injured workers only. The governments clear intent was that common law should be available to only the most seriously injured workers. Three subsequent legislative amendments reaffirmed this intent. However, common law costs have continued to blow out as new ways are found to access this special category. Various studies and research findings have indicated that common law remedies are a wasteful means of delivering compensation to workers. At present, about $100 million goes to lawyers - money that would be better off going to injured workers. The 1997 amendments will abolish common law while increasing the weekly benefits for the majority of injured workers.
workers' compensation system.

**What is Covered?**

Any injury or illness that can be directly attributed to work is covered by the scheme. This includes occupational illnesses set out in a schedule.

To be covered, occupational illness, including stress, must arise out of or in the course of employment and employment must be a significant contributing factor.

**Self Insurance**

Self insurance is permitted in the Victorian workers' compensation system. 24 companies or business enterprises, representing 9% of Victorian employers, are self insured under the Victorian system.

To qualify for self insurance a company must have 500 or greater full-time workers in the state of Victoria and assets of $200,000,000. There is also provision for the application of prudential requirements for companies who self insure.

Recent amendments, yet to be proclaimed, will allow greater access to self insurance.

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6 Under the 1992 legislative reforms the system was refocused on employment-related injuries and illnesses. Prior to 1992, a weak entitlement test meant that many conditions that were primarily related to lifestyle factors or associated with natural aging process were covered by workers' compensation. The 1992 reforms also removed the former entitlement to coverage for journey to work injuries in recognition that employers should only be held accountable for injuries that they have some control over.

7 Of the ten Australian systems, only Queensland and the federal system for seafarers have an absolute bar on self insurance.

8 Prescribed minimum requirements relating to the financial strength and viability of the company have yet to be proclaimed.
Government's role in the workers' compensation system, through the Victorian WorkCover Authority (WorkCover), is fundamentally that of regulator and strategic system manager with service delivery having been delegated to the private sector. WorkCover is the central government administrative agency responsible for underwriting the scheme and making recommendations to government on premium rates and benefit entitlements.


WorkCover's major services are promoting safe workplaces and practices, including providing workplace health and safety advice, emergency response for workplace and public accidents and incidents and inspection and audit of workplaces; licensing and certification of private insurers and service providers and delivery of workers' compensation services through licensed insurers and service providers; managing premium collections and fund investments; and providing WorkCover Conciliation services to resolve disputes involving employers, workers and service providers.

WorkCover has a board of management consisting of one full time director, who acts as Chief Executive, and seven part time directors. The directors are appointed by the Governor in Council and are not required to be representative of any particular group or sector.

9 Licensed private insurers compete on the basis of service not price as the WorkCover Authority is responsible for setting premium rates and holds the fund.
Policy Development
WorkCover has a policy division consisting of the Strategic Policy, Legislative Services, Performance Monitoring and Research and Development branches. The Strategic Policy branch works on both long and short term policy issues. Recommendations for future scheme directions and any necessary legislative change are made to the responsible minister (currently, the Minister of Finance) for consideration by government. The government may also establish a parliamentary or caucus committee to examine the operation of the system and options for future direction of the scheme.

Accountability
WorkCover is a statutory body corporate under the Department of Treasury and Finance with overall responsibility for the administration of workers' compensation and health and safety in the state.

Performance Assessment
WorkCover is subject to the general direction and control of the minister responsible. It is required to publish annual and half yearly operating reports.

An administrative inventory is presently being undertaken of the Victoria system by the W.E. Upjohn Institute for Employment Research. Victoria will be the 20th jurisdiction to be described using the AI protocol.

Claims Adjudication Process
In the Victorian system the adjudication function is outsourced to licensed private insurers.

Legislation requires that work be a significant contributing factor for an injury of illness or disease to be covered by workers' compensation.

10 The W.E. Upjohn Institute for Employment Research will use administrative inventory model developed by the Workers' Compensation Research Institute in Cambridge, Massachusetts. They have assembled a team of workers' compensation academics and practitioners to undertake the AI. This team includes H. Allan Hunt, Peter S. Barth, Robert W. Klein, Ralph McGinn, Terry Bogyo and Alan Clayton.
Dispute Resolution

**Mediation/Conciliation**

The Conciliation Service under the WorkCover scheme, provides workers, employers and insurers access to a voluntary, informal dispute resolution process. Though the Conciliation Service is part of WorkCover, Conciliation Officers are not subject to the control or direction of WorkCover and WorkCover may not interfere with or overrule any decision of an Officer. Conciliation Officers are nominated by the minister.

The internal Conciliation Service facilitates the resolution of workers' compensation disputes by involving all the parties in the settlement process to achieve a fair and mutually acceptable agreement, but discourages legal involvement. If a Conciliation Officer is unable to bring the parties to an agreement, the Officer may issue a direction (limited in nature), or a certificate that a genuine disagreement exists. The worker may then proceed through the court system if he or she chooses.

**Appeals Process**

Appeals involving claims under $40,000, or less than 104 weeks arrears of weekly benefit payments, are appealable to the Magistrates Court; appeals involving claims over $40,000, or greater than 104 weeks duration are appealable to County Court. Proceedings can not be commenced in the Magistrates' or County Courts unless the dispute has first been referred to conciliation and a Conciliation Officer has issued a certificate stating that he or she is satisfied that all reasonable steps have been taken by the claimant to settle the dispute.

A medical issue may be referred by a Conciliation Officer, a court, the WorkCover Authority, an licensed insurer or self insurer to a Medical Panel comprised of independent medical specialists appointed by the Governor in Council. The opinion of a Medical Panel is binding on all parties, including the court.
ASSESSMENTS / FINANCING

Assessment or Premium Setting Process

The percentage of remuneration that is required as a premium is determined on the basis of the employer's claims experience over a three year period. Industry rate is a component (primarily for smaller employers).

In 1993, an experience rating system was introduced to make workers' compensation premiums a true reflection of the risk of the employer or the workplace (the experience rating system adopted in Victoria is very similar to the scheme that has been used in NSW for several years). The overall goal of revamping the insurance arrangements was to move from a system based on central fund liability where an employers' premium was simply a contribution to this fund to a system of direct liability where an employer pays a premium to obtain indemnity for a potential claim against the employer. By introducing an experience rating system claim costs were directly aligned with premium rates so as to adequately meet the insurance of risk while maximizing prevention and return to work behaviour\textsuperscript{11}.

Assessment/Premium Rates

The scheme is fully funded from employers contributions. The average premium assessment rate for 1997/98 and 1996/97 was 1.8\% of payroll (average rate for 1996 was 1.98\%); for 1998/99 the average premium rate is 1.9\%\textsuperscript{12}.

Second Injury Funds / Disaster Funds

There is no second injury or disaster fund under the Victorian WorkCover scheme.

\textsuperscript{11} A key component of the risk based insurance premium system introduced in Victoria was the development of a case estimate system which is used by insurers to estimate the potential cost of a claim upon which a premium is based. An insurer specific multiplier, or an ‘F’ factor, is applied to each insurer's aggregate claims estimate to ensure that their estimates reflect the actuarially assessed claims aggregates.

\textsuperscript{12} This is down from an average of 3.0\% when the WorkCover scheme was first implemented in 1992, resulting in an annual saving of $500 million to employers. The scheme is now also fully funded; unfunded liabilities are down from $2 billion in 1992.
Comparative Review
Victoria, Australia

COMPENSATION BENEFITS

Claim Rate
The number of reported claims in 1996/97 was 33,264; in 1995/96 it was 33,271. This is down from 39,105 in 1993/94. Since 1992, and the fundamental reforms to the system, claim numbers are down by 40%.

Medical Aid

Nature of Aid
Coverage for medical aid and services is comprehensive. All reasonable costs of medical and like services are covered by WorkCover, including travel and accommodation expenses.

Coverage for medical aid ceases 52 weeks after weekly benefit payments cease and, if no work time is lost, 52 weeks after original entitlement. This may be extended in certain circumstances.

Medical services are paid for according to a Medicare Schedule, except for surgical procedures which are paid for on the basis of Australian Medical Association list rates. Cost of other medical and like services not included in the Medicare Schedule is reviewed annually.

The employer must cover the first $426 (indexed) of the costs of medical aid.

Choice of Provider
The injured worker has full choice of treating provider.

Medical Cost Containment Initiatives
Recent legislative amendments provide for the development of Co-ordinated Care programs at the request of the authorized insurer, self insurer, or WorkCover. This is designed to enable the more effective co-ordination or provision of medical and like services received by a worker and will be used to target "problem" claims.  

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13 Ten day employer's excess was introduced July 1, 1993, before that there was a five day excess period. In 1992/93 there were 55,431 claims; 1991/92 there were 68,422 claims; 1990/91, 75, 438 claims; and 1989/90, 80,159 claims.

14 Problem claims are claims where the period of incapacity is far in excess of normal recovery parameters, chronic pain cases and cases where there is evidence of doctor shopping and drug dependency.
The 1992 reforms re-emphasized the priority of rehabilitation for the system. Workplace rehabilitation is the focus:\(^{15}\).

Employers with a payroll of a $1 million or greater must have a formal rehabilitation program, an on-site designated Rehabilitation Coordinator; direct access to a designated occupational rehabilitation provider; a formal rehabilitation policy that has been agreed to by their workforce; and, for every worker that is likely to be off work for more than 20 days, a return-to-work plan that is mutually agreed to with the worker.

All occupational rehabilitation is provided through registered providers and all rehabilitation expenditures, including referral to rehabilitation, are subject to approval by the employer and/or insurer.

Modifications to a house or car, attendant care and household help, and counseling are compensable under the scheme as approved by WorkCover.

An employer is required to provide suitable employment when a worker is fit to resume work, or the same or equivalent position if the worker is fully fit to return to work, within 12 months of becoming incapacitated. The WISE (WorkCover Incentive Scheme for Employers) offers a wage subsidy of up to $15,000 and an exemption for costs incurred if worker's original injury recurs to new employers who employ workers who are ready to return to work but are unable to do so with their former employer. The system also provides rehabilitation incentives through benefit step down provisions. Under this program, a worker's entitlement to weekly benefits is contingent upon their making every reasonable effort to return to work and their participation in rehabilitation. WorkCover may cover the costs of modifications to the work environment.

\(^{15}\) Before 1992, a separate government agency was responsible for rehabilitation. This agency had total responsibility for the rehabilitation of injured workers and approved all rehabilitation plans, services, and providers. The change to a workplace rehabilitation focus is consistent with broader goals of the system reform that the employer is directly responsible and accountable for workplace safety and accident prevention, return-to-work arrangements and compensation payments.
Trends in Treatment of Subjective Complaints

The Co-ordinated Care programs initiative is aimed at developing ways to manage and treat workers with chronic pain. There are legislative restrictions on the compensability of stress claims such as exclusions from entitlement that apply to stress conditions that arise in specific circumstances (reasonable action taken by an employer to transfer, demote, discipline, etc.). WorkCover has released guidelines for the management of back injuries, a long-standing problem for the scheme, and is presently developing long term strategies for dealing with stress claims.

Disability Benefits

Weekly "loss of earnings or wage loss" compensation:

Rate: Effective December 11, 1997, initial weekly benefits of 95% of pre-injury average weekly earnings (PIAWE) will be payable for up to 13 weeks (make up pay provision in some awards lasts for at least six months). After 13 weeks and up to two years, a worker assessed with "current work capacity" is eligible for 60% PIAWE, less notional earnings; a worker assessed with "no current work capacity" is eligible for 75% PIAWE.

Indexed: Weekly benefits are indexed using the average weekly earnings figure for all Victorian workers.

Duration: At 104 weeks of payments, injured workers are reassessed and if rated at "no current work capacity" indefinitely benefits will continue at 75% PIAWE; if worker assessed at "current work capacity" and has returned to work, is working more than 15 hours, earning more than $100 and will continue indefinitely to be incapable of undertaking further or additional employment, the worker may apply to remain on benefits at a rate of 60% PIAWE less 60% of current earnings.

Taxable: Yes.

Employer's Excess / Waiting Periods: The employer must cover the first two weeks or 10 working days of benefit payments at a rate equal to 95% of PIAWE. There is no employee co-payment or waiting period in relation to benefits.
"Loss of earnings or wage loss" awards or pensions:

**Rate:** Under the 1997 amendments, effective December 11, 1997, an injured worker assessed at "no current work capacity for the foreseeable future" is eligible for benefits of 75% of PIAWE to retirement; a worker with "current work capacity" and who is working part-time but is incapable of undertaking further additional employment may receive 60% PIAWE less 60% current earnings.

**Indexed:** Benefits are indexed using the average weekly earnings figure for all Victorian workers.

**Duration:** Normal retirement age.

**Taxable:** Yes.

**Offset Against Other Social Security Benefits:** Yes, offset against Social Security payments.

Award for permanent physical impairment:

**Periodic (pension or annuity):** Payment method will be lump-sum and installments (formula yet to be established).

**Lump-sum:** Under the 1997 amendments, effective December 11, 1997, compensation will be calculated on whole person impairment with a 10% threshold for physical injuries (amputations below 10% will still be eligible) and a 30% threshold for psychiatric injuries. The amount of the non-economic award will be calculated according to a formula with payments ranging from $5,000 for 10% impairment, $45,00 for 30% impairment, $175,000 for 70% impairment, and $300,000 for impairments of 80% or more.

**Covers Disfigurement:** Yes.


**Supplemental Awards:** The scheme will cover the reasonable costs of attendant and household care.

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16 The Commonwealth Department of Social Security will have regard to any WorkCover entitlements when determining if a worker has a concurrent entitlement to Social Security payments. Specific provision is made for the reduction or suspension of weekly payments to a worker who receives employer sponsored lump-sum superannuation or retirement benefits in certain circumstances.
**Hearing Loss**
Industrial deafness is considered to be an occupational injury. In order to be compensable, the deafness must have arisen out of or in the course of employment and work must be a significant contributing factor to the injury, or pre-existing injury or its recurrence, aggravation, acceleration, exacerbation or deterioration. Compensation is not payable for industrial deafness unless the diminution of hearing is at least 10%.

**Death Benefits**

**Funeral Expense Benefits**

**Funeral Costs:** The scheme will cover the reasonable and actual costs of burial and cremation.

**Emergency Lump-sum:** None.

**Survivor Benefits**

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<th>Survivor Category</th>
<th>Lump-sum</th>
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<tr>
<td>Dependent spouse, no children</td>
<td>Under the 1997 amendments, effective December 11, 1997, lump-sum of $175,000.</td>
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<tr>
<td>Dependent spouse, with children</td>
<td>$157,500 to spouse, $17,500 to child; if dependent spouse has not more than five children, $8,750 to each child and remainder to spouse; if more than five children $131,250 to spouse and $43,750 divided between children.</td>
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**Pension**
First 13 weeks, lesser of 95% of deceased's PIAWE or $850, after 13 weeks to 3 years, 50% PIAWE or $850.17.

First 13 weeks, just dependent spouse pension; after 13 weeks, up to five children, 5% PIAWE each child; more than five children, 25% PIAWE for all; total pension amount can not exceed $850 per week. Child's pension continues until child 16 years or 21 if full-time student.

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17 Maximum pension amount not to exceed $125,000 in total.

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| Dependent Orphan | $175,000 | First 13 weeks, lessor of 95% of deceased's PIAWE or $850, after 13 weeks until no longer eligible, lessor of 50% of PIAWE or $850, divided among orphans. |
HEALTH & SAFETY & PREVENTION

Programs or Agencies Responsible
Since July 1996, when the Health and Safety Organization was amalgamated with WorkCover, WorkCover has had responsibility for occupational health and safety in Victoria and is responsible for the administration and enforcement of the *Occupational Health and Safety Act, 1985* and related legislation.

Though the Governor in Council is responsible for passing occupational health and safety regulations under the Act, WorkCover has authority to pass "Codes of Practice" as guides to the industry in how to comply with and implement the requirements and rules in the Act and regulations.

Source of Funding
WorkCover is completely funded by assessments on employers (prior to the amalgamation of the former Health and Safety Organization with WorkCover, about 70% of the Organization's budget was funded by employers' assessments and about 30% was funded from the government's Consolidated Revenue fund).

Accident Reporting
Unknown.

OHS Representatives & Committees
The legislation provides for, but does not require, worksite occupational health and safety representatives and committees. Where employees request that an employer establish a committee, the Act sets out the requirements respecting the composition of the committee and its powers and responsibilities. An OHS committee may be established at the request of the safety representative.
### Offenses and Penalties

#### Contraventions of the Legislation

**Types of Offenses and Maximum Fines:**

Penalties for contravention of the OHS Act and regulations were substantially increased in 1997 amendments to the legislation. A person contravening the Act or regulations is now subject to a maximum fine of up to $250,000 in the case of a corporation, up from $40,000, and up to $50,000, for individuals, up from $10,000.

**Convictions:**

A record of OHS prosecutions and penalties is published annually. In 1996/97, there were 78 successful prosecutions, resulting in total fines of $824,200.

#### Administrative Penalties

There is no provision for administrative fines in Victoria.

### OHS Legislative Review

There is no legislated requirement for the periodic, systematic review of the OHS Act. However, under the *Subordinate Legislation Act*, all regulations are "sunset" after 10 years. This legislation also requires that a regulatory impact statement be prepared when major new regulations are contemplated or when existing regulations are reviewed.

### Health and Safety and Loss Prevention Initiatives

WorkCover offers a number of programs targeted at preventing work-related accidents. These include:

- the Safety Management Achievement Program, known as SafetyMAP, which is a do-it-yourself audit tool to help organizations make an objective assessment of their health and safety management systems against current best practices and then build their own safety management system;

- TruckSafe, a joint initiative of the Road Transport Forum and WorkCover, aimed at reducing injuries and lowering the high cost of claims in Victoria's trucking industry;

- the Performance Improvement Pilot Project, which targets the 100 companies whose premiums and costs to the scheme are higher than the industry average, and helps them to raise their performance to the industry average while developing and testing performance improvement methodology that can be used to target and assist other poor performers.
The Investigations Section of the Victorian WorkCover Authority comprises 11 permanent staff under the structure of manager, two senior investigators, and seven investigators.

In addition to being responsible for investigation of alleged fraud, the section is responsible for inquiring into other matters relevant to wrongful dismissal, premium evasion, failure to comply with statutory provision related to rehabilitation, breaches or secrecy provisions, and the adequacy and appropriateness of services.

In 1996, the section undertook approximately 160 investigations directly and 6,986 through private investigators (in 1995, it undertook about 125 investigations directly and 6,421 through private investigators). The investigations undertaken by the section are in support of both criminal and civil action. Many investigations simply result in the termination of compensation benefits, or the rapid return to work of an employee without any involvement of the courts. There were 47 criminal briefs submitted for the 12 month period ending June 30, 1997.